



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,562	07/30/2006	Greg McLemore	MCL2.P001NP	2929
57380	7590	06/01/2009		
Oppedahl Patent Law Firm LLC P.O. BOX 4850 FRISCO, CO 80443-4850			EXAMINER VIZVARY, GERALD C	
			ART UNIT	PAPER NUMBER
			3696	
			NOTIFICATION DATE	DELIVERY MODE
			06/01/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket-oppedahl@oppedahl.com

Office Action Summary	Application No. 10/597,562	Applicant(s) MCLEMORE ET AL.	
	Examiner GERALD C. VIZVARY	Art Unit 3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-8 and 18-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-8 & 18-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. In the amendment filed 3/8/2009, the following has occurred: claims 1-4 & 9-17 have been cancelled. Claims 5, 6, 7 & 18 have been amended. Now, claims 5-8 & 18-25 are presented for examination.

Claim Objections

2. The claim objections to claims 5, 18, 20 & 23 are withdrawn.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 5, 18, 20 & 23 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility. Depending upon the system, the method may or may not be enabled.

Claim Rejections - 35 USC § 112 1st paragraph

5. Claims 5, 18, 20 & 23 also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Claim Rejections - 35 USC § 112 2nd paragraph

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 18, 20 & 23 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: a computer-based auction system.

7. The 35 USC § 112 2nd paragraph rejection of Claims 6 & 7 is withdrawn.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5-8 & 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery 2002/0038282 A1 in view of Ben-Meir US 2003/0014326 A1.

As per claim 5 (Currently amended) Montgomery 2002/0038282 A1 discloses a method for use with a bidding apparatus including a computer, a computer-based auction system, the auction system communicatively coupled with sellers and bidders, the

Art Unit: 3696

system having records indicative of sellers of items and records indicative of bidders for the items and identifying for each item a winning bidder in an auction, the method comprising the steps, ~~performed by a first bidder~~, of: by a ~~[[the]]~~ first bidder, selecting a first item ("The Buyer can select the targeted auction and auctioned item (product) from a result list. The result list can be created by use of a meta search engine. One or more items, i.e., products, can then be selected from the result list to receive automated bids placed by the buyer's bidding proxy." Montgomery 2002/0038282 A1 ¶ [0010]);

by the computer, finding second items other than the first item for which bids have been placed by one or more of the second bidders ("FIG. 2 depicts an exemplary embodiment of a flow diagram illustrating a Cascaded Bid service that can enable the buyer to select multiple auctions for the same or several different items and can enter them into a linked, bid cascade according to the present invention" Montgomery 2002/0038282 A1 ¶ [0033]);

by the first bidder, choosing a second item for which the auction has not yet ended and for which the first bidder has not yet placed a bid ("The method can enable activation of bid proxies as an auction nears completion to begin placing bids until the auction is won or lost by auction closing and can confirm a counter-offer has not out-bid. The method can compute and execute another higher bid if a counter-offer has been made and accepted, higher than the most recent bid detected" Montgomery 2002/0038282 A1 Abstract); and

by the first bidder, placing a bid for the second item prior to the end of the auction, the bid higher than any bid previously placed for the second item. ("FIG. 2 depicts an

Art Unit: 3696

exemplary embodiment of a flow diagram illustrating a Cascaded Bid service that can enable the buyer to select multiple auctions for the same or several different items and can enter them into a linked, bid cascade according to the present invention”
Montgomery 2002/0038282 A1 ¶ [0034])

Montgomery 2002/0038282 A1 fails to explicitly teach by the computer, obtaining information indicative of identities of second bidders other than the first bidder who previously placed respective bids for the first item

Ben-Meir US 2003/0014326 A1 teaches “The web server 40 is for allowing multiple browser clients to access the server application. For that reason it contains a servlet, or equivalent web server extension such as a CGI script, whose purpose is to move data back and forth between web clients and their respective client sessions on the server application. Ben-Meir US 2003/0014326 A1 ¶ [0027]);

It would have been obvious to one of ordinary skill in the art at the time of the invention to include multiple bidder access as taught by Ben-Meir US 2003/0014326 A1 in the system of Montgomery 2002/0038282 A1, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 6 (Currently amended) Montgomery 2002/0038282 A1 in view of Ben-Meir US 2003/0014326 A1 teaches a method of claim 5.

Montgomery 2002/0038282 A1 further discloses the second bidders comprise all other bidders, other than the first bidder, who previously placed respective bids for the first

Art Unit: 3696

item. ("The bid engine can scan the active bids for all buyers and can determine which bids are ready to execute based on their time to close activation parameter. The bid engine can then scan the targeted auction site to determine the current high bid and bidder." Montgomery 2002/0038282 A1 ¶ [0072])

As per claim 7 (Currently amended) Montgomery 2002/0038282 A1 in view of Ben-Meir US 2003/0014326 A1 teaches a method of claim 5.

Montgomery 2002/0038282 A1 fails to explicitly teach the second bidders comprise more than one and less than all other bidders, other than the first bidder, who previously placed respective bids for the first item. ("The web server 40 is for allowing multiple browser clients to access the server application. For that reason it contains a servlet, or equivalent web server extension such as a CGI script, whose purpose is to move data back and forth between web clients and their respective client sessions on the server application. Ben-Meir US 2003/0014326 A1 ¶ [0027])

It would have been obvious to one of ordinary skill in the art at the time of the invention to include multiple bidder access as taught by Ben-Meir US 2003/0014326 A1 in the system of Montgomery 2002/0038282 A1, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Art Unit: 3696

As per claim 8 (Original) Montgomery 2002/0038282 A1 in view of Ben-Meir US 2003/0014326 A1 teaches a method of claim 5.

Montgomery 2002/0038282 A1 further discloses the step of: by the first bidder, winning the auction. ("The bid engine can scan the active bids for all buyers and can determine which bids are ready to execute based on their time to close activation parameter. The bid engine can then scan the targeted auction site to determine the current high bid and bidder." Montgomery 2002/0038282 A1 ¶ [0072])

As per claim 18 (Currently amended) Montgomery 2002/0038282 A1 discloses method for use with a bidding apparatus including a computer, a computer-based auction system, the auction system communicatively coupled with sellers and bidders, the system having records indicative of sellers of items and records indicative of bidders for the items and identifying for each item a winning bidder in an auction, the method comprising the steps of:

by a [[the]] searcher, selecting a first item ("The method can provide auction monitoring by scan agents of temporal progression of product auctions, and can notify someone via a messaging center of any changes in relevant aspects of the status that could prevent an initial bid from being placed by a bid proxy." Montgomery 2002/0038282 A1 Abstract);

by the computer, obtaining information indicative of identities of second bidders other than the first bidder who previously placed respective bids for the first item ("The Buyer can select the targeted auction and auctioned item (product) from a result list. The result

Art Unit: 3696

list can be created by use of a meta search engine. One or more items, i.e., products, can then be selected from the result list to receive automated bids placed by the buyer's bidding proxy." Montgomery 2002/0038282 A1 ¶ [0010]);

;by the searcher, communicating the second items to a first bidder ("The method can provide auction monitoring by scan agents of temporal progression of product auctions, and can notify someone via a messaging center of any changes in relevant aspects of the status that could prevent an initial bid from being placed by a bid proxy" Montgomery 2002/0038282 A1 Abstract);

by the first bidder, choosing a second item for which the auction has not yet ended and for which the first bidder has not yet placed a bid ("The method can enable activation of bid proxies as an auction nears completion to begin placing bids until the auction is won or lost by auction closing and can confirm a counter-offer has not out-bid. The method can compute and execute another higher bid if a counter-offer has been made and accepted, higher than the most recent bid detected" Montgomery 2002/0038282 A1 Abstract); and

by the first bidder, placing a bid for the second item prior to the end of the auction, the bid higher than any bid previously placed for the second item. ("FIG. 2 depicts an exemplary embodiment of a flow diagram illustrating a Cascaded Bid service that can enable the buyer to select multiple auctions for the same or several different items and can enter them into a linked, bid cascade according to the present invention" Montgomery 2002/0038282 A1 ¶ [0034])

Art Unit: 3696

by the computer, finding second items other than the first item for which bids have been placed by one or more of the second bidders ("The web server 40 is for allowing multiple browser clients to access the server application. For that reason it contains a servlet, or equivalent web server extension such as a CGI script, whose purpose is to move data back and forth between web clients and their respective client sessions on the server application. Ben-Meir US 2003/0014326 A1 ¶ [0027])

It would have been obvious to one of ordinary skill in the art at the time of the invention to include multiple bidder access as taught by Ben-Meir US 2003/0014326 A1 in the system of Montgomery 2002/0038282 A1, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 19 (Original) Montgomery 2002/0038282 A1 in view of Ben-Meir US 2003/0014326 A1 teaches a method of claim 18.

Montgomery 2002/0038282 A1 further discloses the step of: by the first bidder, winning the auction. ("the current auction status within a time to auction close window (TACW) wherein said TACW spans a range of time beginning at a time calculated by subtracting an absolute time to start proxied bidding from an auction end time, and ending with a time of the auction end time, wherein the TACW defines a period of time when a scan agent and a bid proxy work in tandem to place as many bids as necessary to win an auction" Montgomery 2002/0038282 A1 ¶ [0020])

As per claim 20 (Original) Montgomery 2002/0038282 A1 discloses a method for use with a bidding apparatus including a computer, a computer-based auction system, the auction system communicatively coupled with sellers and bidders, the system having records indicative of sellers of items and records indicative of bidders for the items and identifying for each item a winning bidder in an auction, the method comprising the steps of:

for a user, identifying instances of a bidder bidding on an item that the user has bid on; if the number of such instances exceeds a predetermined threshold, adding that bidder to a list of bidders of interest. ("Next, site performance parameters are calibrated in step 810. Then in step 812, the item's current price and bidder is obtained. If the current price is from AP users proxied bid, at decision step 814, and if the bid is not closed at step 820, flow proceeds to fast scan 724. If the bid is closed at step 820, then the bid history and win status are logged at step 828 and stored in a transaction history 610." Montgomery 2002/0038282 A1 ¶ [0075])

Montgomery 2002/0038282 A1 fails to explicitly teach multiple bidders.

Ben-Meir US 2003/0014326 A1 teaches "The web server 40 is for allowing multiple browser clients to access the server application. For that reason it contains a servlet, or equivalent web server extension such as a CGI script, whose purpose is to move data back and forth between web clients and their respective client sessions on the server application. Ben-Meir US 2003/0014326 A1 ¶ [0027])

Art Unit: 3696

It would have been obvious to one of ordinary skill in the art at the time of the invention to include multiple bidder access as taught by Ben-Meir US 2003/0014326 A1 in the system of Montgomery 2002/0038282 A1, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 21 (Original) Montgomery 2002/0038282 A1 in view of Ben-Meir US 2003/0014326 A1 teaches a method of claim 20.

Montgomery 2002/0038282 A1 further discloses the step, performed by the user, of manually adding a bidder to the list of bidders of interest. ("If the state sequence is at state s2, the buyer/bidder authentication is entered at step 912. The state sequence then proceeds to the next state. In state s3, the bidder's bid is entered at step 914. The state sequence is then complete." Montgomery 2002/0038282 A1 ¶ [0078])

As per claim 22 (Original) Montgomery 2002/0038282 A1 in view of Ben-Meir US 2003/0014326 A1 teaches a method of claim 20.

Montgomery 2002/0038282 A1 further discloses by the computer, items for which an auction is pending, upon which one or more of the bidders from the list has bid; and by the user, bidding upon one of the identified items. ("The method can enable activation of bid proxies as an auction nears completion to begin placing bids until the auction is won or lost by auction closing and can confirm a counter-offer has not out-bid.

Art Unit: 3696

The method can compute and execute another higher bid if a counter-offer has been made and accepted, higher than the most recent bid detected” Montgomery 2002/0038282 A1 Abstract)

As per claim 23 (Original) Montgomery 2002/0038282 A1 discloses a method for use with a bidding apparatus including a computer, a computer- based auction system, the auction system communicatively coupled with sellers and bidders, the system having records indicative of sellers of items and records indicative of bidders for the items and identifying for each item a winning bidder in an auction, the method comprising the steps of:

for a user, identifying instances of a seller offering an item that the user has bid on (“The Buyer can select the targeted auction and auctioned item (product) from a result list. The result list can be created by use of a meta search engine. One or more items, i.e., products, can then be selected from the result list to receive automated bids placed by the buyer's bidding proxy.” Montgomery 2002/0038282 A1 ¶ [0010]);

if the number of such instances exceeds a predetermined threshold, adding that seller to a list of sellers of interest. (“In one exemplary embodiment, the method can further include: h. storing product preferences of the Buyer for products, including preference information that can be used by at least one of a persistent search agent, and a bid proxy operating under at least one of directed programmed bidding, and algorithmically calculated bidding parameters.” Montgomery 2002/0038282 A1 ¶ [0017])

Montgomery 2002/0038282 A1 fails to explicitly teach multiple bidders.

Art Unit: 3696

Ben-Meir US 2003/0014326 A1 teaches "The web server 40 is for allowing multiple browser clients to access the server application. For that reason it contains a servlet, or equivalent web server extension such as a CGI script, whose purpose is to move data back and forth between web clients and their respective client sessions on the server application. Ben-Meir US 2003/0014326 A1 ¶ [0027])

It would have been obvious to one of ordinary skill in the art at the time of the invention to include multiple bidder access as taught by Ben-Meir US 2003/0014326 A1 in the system of Montgomery 2002/0038282 A1, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 24 (Original) Montgomery 2002/0038282 A1 in view of Ben-Meir US 2003/0014326 A1 teaches a method of claim 23.

Montgomery 2002/0038282 A1 further discloses the step, performed by the user, of manually adding a seller to the list of sellers of interest. ("In another exemplary embodiment of the present invention, a system, method and computer program product for automating a Buyer's online, electronic search agent of specific electronic auctions on a targeted auction site is set forth including: a. providing a programmable search agent, from a server, that searches auction catalogs of a plurality of auction sites and identifies correlations between product parameters of a Buyer that can be at least one of entered and stored, and can include at least one of keywords, product classifications,

Art Unit: 3696

and price ranges, and products that are listed for sale through dynamic price competitive bidding using a number of electronic auction techniques including at least one of a Dutch, Yankee, and Reverse auction techniques.” Montgomery 2002/0038282 A1 ¶ [0018])

As per claim 25 (Original) Montgomery 2002/0038282 A1 in view of Ben-Meir US 2003/0014326 A1 teaches a method of claim 23.

Montgomery 2002/0038282 A1 further discloses the steps of:

identifying by the computer, items for which an auction is pending, for which the seller is one of the sellers from the list; and by the user, bidding upon one of the identified items. (“The Buyer can select the targeted auction and auctioned item (product) from a result list. The result list can be created by use of a meta search engine. One or more items, i.e., products, can then be selected from the result list to receive automated bids placed by the buyer's bidding proxy.” Montgomery 2002/0038282 A1 ¶ [0010])

Conclusion

10. The following is prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Grey (US 2003/0041014 A1) teaches a system for conducting a sell side auction.

Rackson (US 6,415,270 B1) teaches a multiple auction coordination and method.

Dinwoodie (US 2002/0082980 A1) teaches an interactive remote auction bidding system for conducting an auction utilizes a data input device for communication over a network to the auction site.

Art Unit: 3696

Guler (US 20030018562 A1) teaches an automated estimation and optimization solution for selecting the best auction format.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald C. Vizvary whose telephone number is 571-270-3268. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dixon can be reached on 571-272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-270-4268.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/THOMAS A DIXON/

Supervisory Patent Examiner, Art Unit 3696

Gerald Vizvary

Patent Examiner, A.U. 3696

May 26, 2009

Application/Control Number: 10/597,562
Art Unit: 3696

Page 16